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SECRETARIAT

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**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT**

RE: MUR 5444

DATE COMPLAINT FILED: April 2, 2004

DATE OF NOTIFICATION: October 22, 2003

DATE ACTIVATED: July 7, 2004

EXPIRATION OF STATUTE OF LIMITATIONS:  
February 6, 2009

**COMPLAINANT:** Democratic Congressional Campaign Committee

**RESPONDENTS:** Marcus Belk  
National Democratic Political Committee and  
Marcus Belk, as Treasurer  
National Democratic Senatorial Committee and  
Marcus Belk, as Treasurer  
National Democratic Congressional Committee and  
Marcus Belk, as Treasurer  
Democratic Majority 2004 and Marcus Belk, as Treasurer  
Belk 2004 and Marcus Belk, as Treasurer  
Belk 2004 US Senate and Charles Belk, as Treasurer

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 441h(b)

2 U.S.C. § 433

2 U.S.C. § 434

**INTERNAL REPORTS CHECKED:** Disclosure Reports  
Internal Indices

**FEDERAL AGENCIES CHECKED:** United States Internal Revenue Service

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2 **I. INTRODUCTION**  
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4       The complaint in this matter alleges that Marcus Belk fraudulently misrepresented  
5 himself as acting on behalf of the Democratic Congressional Campaign Committee ("the  
6 DCCC") for the purpose of soliciting contributions in violation of 2 U.S.C. § 441h(b).  
7 The complaint further alleges that Mr. Belk may have operated a political committee  
8 without registering and reporting with the Commission in violation of 2 U.S.C. §§ 433  
9 and 434.<sup>1</sup>

10       In short, the names of Mr. Belk's committee and the DCCC were similar; the  
11 DCCC had a prior history of receiving annual contributions from an entity that diverged  
12 from its previous pattern and contributed \$15,000 to Mr. Belk's committee; the  
13 contribution check was in an amount (\$15,000) that only a national party committee  
14 could accept; and Mr. Belk failed to respond to the complaint's allegation. Available  
15 information indicates that Mr. Belk registered multiple committees with the Commission  
16 within the last two years, some with names that can be confused with certain national  
17 party committees, including one – the National Democratic Congressional Committee  
18 ("NDCC") – that has a name that can be easily confused with the DCCC. For the reasons  
19 set forth below, this Office concludes that there is a sufficient factual predicate for  
20 investigating whether Mr. Belk knowingly and willfully used the NDCC to fraudulently  
21 solicit federal contributions.

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<sup>1</sup>       The complaint further alleges that Mr. Belk may have committed bank fraud pursuant to 18 U.S.C. § 1344 by endorsing a contribution check without authority and violated 18 U.S.C. § 1341 by causing the check to be mailed to him. This Report does not address these allegations because the issues are not within the Commission's jurisdiction; however, the complaint in this matter was simultaneously filed with the United States Department of Justice.

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1           Additionally, this Office concludes that the NDCC and Marcus Belk, as treasurer,  
2   violated 2 U.S.C. §§ 433 and 434 by failing to re-register as a political committee once  
3   the Committee received a contribution in excess of \$1,000 and by failing to file  
4   disclosure reports with the Commission thereafter; violated 2 U.S.C. § 441a(a)(1)(c) by  
5   accepting a contribution that was excessive by \$10,000; and violated 2 U.S.C.  
6   § 432(b)(3) by potentially commingling the contributed funds with Mr. Belk's personal  
7   funds.

8   **II.   FACTUAL AND LEGAL ANALYSIS**

9       **A.   Factual Background**

10           According to the complaint, on or around February 6, 2004, the Ford Motor  
11   Company Civic Action Fund issued a \$15,000 check payable to an organization calling  
12   itself the "National Democratic Campaign Committee."<sup>2</sup> The complaint states that, on  
13   information and belief, the \$15,000 check was intended as a contribution to the DCCC.  
14   According to the complaint, the DCCC never received the check; instead, the check was  
15   endorsed and deposited by an individual named Marcus Belk. The DCCC attached a  
16   copy of the front and back of the check to the complaint.<sup>3</sup> The DCCC states that it is not  
17   aware of the circumstances that caused the check to be made payable to the NDCC or to  
18   enter Mr. Belk's possession. A review of the Commission's disclosure reports reveals  
19   that, with the exception of 2004, the DCCC received contributions from the Ford Motor  
20   Company Civic Action Fund every year since 1997.

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<sup>2</sup>       The check was actually made payable to the "National Democratic Congressional Cmte."

<sup>3</sup>       How the DCCC obtained a copy of the \$15,000 check is not known at this time.

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1           Based on the apparent intentional similarity in the names of Mr. Belk's  
2 organizations and those of the DCCC and other Democratic national party committees,  
3 the complainant alleges that Mr. Belk fraudulently misrepresented himself as acting on  
4 the DCCC's behalf for the purpose of soliciting contributions in violation of 2 U.S.C.  
5 § 441h(b). The complaint further alleges that Mr. Belk may have violated 2 U.S.C.  
6 §§ 433 and 434 by receiving the \$15,000 contribution after having terminated the NDCC.

7           The complaint notes that in June 2003, Mr. Belk filed Statements of Organization  
8 with the Commission for four political committees – the NDCC, the National Democratic  
9 Senatorial Committee, the National Democratic Political Committee, and Democratic  
10 Majority 2004. On October 15, 2003, Mr. Belk filed termination reports with respect to  
11 each of these committees, which, according to disclosure reports filed with the  
12 Commission, received no contributions and made no disbursements. By letter dated  
13 October 31, 2003, the Commission accepted the filings as valid terminations.

14           The complaint further notes that Mr. Belk was a candidate for the Democratic  
15 nomination in New Jersey's Ninth District congressional primary and was also a  
16 candidate for the Democratic nomination for the U.S. Senate in South Carolina. Mr. Belk  
17 entered both of these races in 2003, running first in New Jersey and then in South  
18 Carolina.<sup>4</sup> Mr. Belk's principal campaign committees for his New Jersey and South  
19 Carolina campaigns were Belk 2004 and Belk 2004 U.S. Senate, respectively.<sup>5</sup> This

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<sup>4</sup> According to news reports, during the same time period, Mr. Belk was also the campaign manager for Draft Traficant for President 2004, which, according to a Statement of Candidacy filed by imprisoned former Congressman Jim Traficant, was Mr. Traficant's principal campaign committee. See <http://www.magnoliareport.com/Traficant.com> (visited June 18, 2004).

<sup>5</sup> According to Commission records, on May 20, 2003, Mr. Belk filed a statement of candidacy for the Ninth Congressional district in New Jersey, and on June 11, 2003, filed a Statement of Organization for his campaign committee, Belk 2004. Shortly thereafter, Mr. Belk filed a termination report for Belk 2004

1 Office sent notifications of the complaint to Mr. Belk as an individual, and to Mr. Belk as  
2 the treasurer of his former political committees. Notifications were also sent to Mr. Belk  
3 as the treasurer of Belk 2004, and to Charles Belk as the treasurer of Belk 2004 U.S.  
4 Senate. No responses have been received.<sup>6</sup>

5 **B. Analysis**

6 The facts of this matter raise the question of whether Mr. Belk misrepresented  
7 himself as acting on behalf of the Democratic Congressional Campaign Committee for  
8 the purpose of soliciting contributions in violation of 2 U.S.C. § 441h(b). Section  
9 441h(a) prohibits any person who is a candidate or an employee or agent of such  
10 candidate from fraudulently misrepresenting himself as speaking, writing, or acting for or  
11 on behalf of another candidate or party on a matter that is damaging to that candidate or  
12 party. The Bipartisan Campaign Reform Act of 2002 ("BCRA") amended the statute by  
13 adding subsection (b), which bans the fraudulent solicitation of funds by any person and  
14 prohibits any person from willfully and knowingly participating in, or conspiring to  
15 participate in, plans, schemes, or designs to make such fraudulent misrepresentations in

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that was accepted by the Commission on July 18, 2003, and dropped out of the race. On August 8, 2003, Mr. Belk filed a statement of candidacy for the Democratic nomination for the U.S. Senate in South Carolina, and filed a Statement of Organization for his campaign committee, Belk 2004 U.S. Senate, on September 15, 2003. Mr. Belk withdrew from the Senate primary contest prior to the election.

<sup>6</sup> On November 10, 2004, this Office received a letter from Brian Neary, stating that he is Mr. Belk's counsel and requesting that all inquiries regarding Mr. Belk be made to his office. In response, this Office ultimately contacted Mr. Neary on November 17, 2004, and advised him that if his client intends to submit a late response to the complaint, he should do so as soon as possible. Mr. Neary gave no assurances as to if or when a response might be submitted and expressed only his understanding that he should move the matter of submitting a response "to the front of the pile" if he is interested in having it considered by the Commission. To date, no response has been received.

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1 soliciting contributions and donations.<sup>7</sup> *See* 2 U.S.C. § 441h(b); *see also* 11 C.F.R.  
2 § 110.16.

3 Subsection (b) was intended to address the Commission's inability under the pre-  
4 BCRA statute to pursue enforcement actions against persons and organizations not  
5 associated with a candidate who engage in fraudulent solicitation of funds. *See* Final  
6 Rule on Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of  
7 Campaign Funds, 67 Fed. Reg. 76,962, 76,969 (Dec. 13, 2002); *see also Federal Election*  
8 *Commission Annual Reports* for 2001 at 39, for 1999 at 47-48, for 1998 at 52, for 1997 at  
9 47 (recommending that Congress amend § 441h to prohibit fraudulent solicitation  
10 because contributions that people believed were going for the benefit of the candidate  
11 were diverted for other purposes, harming both the candidates and the contributors).

12 The record currently contains no information regarding any communication  
13 between Mr. Belk and the Ford Motor Company Civic Action Fund. However, the fact  
14 that Mr. Belk created a political committee with a name – the Democratic National  
15 Campaign Committee – that can be easily confused with the Democratic Congressional  
16 Campaign Committee, and accepted a contribution in an amount (\$15,000) that only a  
17 national party committee is permitted to accept, *see* 11 C.F.R. § 110.1(c), raises the  
18 question of whether Mr. Belk used the NDCC to intentionally deceive persons and cause

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<sup>7</sup> Section 441h(b)(2) requires that a Respondent "willfully and knowingly" participate in, or conspire to participate in, a plan, scheme or design to engage in fraudulent solicitation. Thus, "knowing and willful" is an element of the statute rather than a separate basis for increased civil and criminal liability under 2 U.S.C. § 437g(d)(1)(C).

1 them to make contributions to the NDCC with the misapprehension that they were  
2 contributing to the DCCC.<sup>8</sup>

3 While the record currently does not contain information regarding an express  
4 misrepresentation, the fact that the Ford Motor Company Civic Action Fund had a seven-  
5 year history of making annual contributions to the DCCC, and diverged from its prior  
6 pattern when it contributed \$15,000 to the NDCC suggests that Mr. Belk may have  
7 obtained the Fund's \$15,000 contribution by misrepresenting his committee as the DCCC  
8 or affiliated with the DCCC. The fact that the Ford Motor Company Civic Action Fund  
9 may have been intentionally misled is further supported by the fact that the Fund  
10 contributed an amount that only a national party committee may accept; Mr. Belk's  
11 NDCC, as a nonconnected committee, could accept no more than \$5,000 from the Fund  
12 in any calendar year. 2 U.S.C. § 441a(a)(1)(C).

13 Given the available information, it would also be appropriate at this stage for the  
14 Commission to draw an adverse inference from Mr. Belk's failure to respond to the  
15 complaint. The adverse inference rule provides a tool for courts and agencies to infer that  
16 when a party fails to produce relevant information within his or her control, then the  
17 information is unfavorable to that party. *See generally* Memorandum to the Commission  
18 Regarding Adversæ Inference, dated October 27, 2003.

19 Finally, it appears that the activities of Mr. Belk may have been intentionally  
20 designed to mislead reasonable people and, therefore, may have been knowing and  
21 willful. The knowing and willful standard requires knowledge that one is violating the

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<sup>8</sup> Courts have held that even absent an express misrepresentation, a scheme devised with the intent to defraud is still fraud if it was reasonably calculated to deceive persons of ordinary prudence and comprehension. *See U.S. v. Thomas*, 377 F.3d 232, 242 (2<sup>nd</sup> Cir. 2004), *citing Silverman v. U.S.*, 213 F.2d 405 (5<sup>th</sup> Cir. 1954).

1 law. *See Federal Election Comm'n v. John A. Dramesi for Congress Comm.*, 640 F.  
2 Supp. 985, 987 (D.N.J. 1986). Proof that a defendant acted deliberately and with  
3 knowledge that the representation was false may establish a knowing and willful  
4 violation, and a jury may infer that a defendant's acts were knowing and willful from the  
5 defendant's elaborate scheme to disguise his actions. *See United States v. Hopkins*, 916  
6 F2d 207, 214-15 (5<sup>th</sup> Cir. 1990).

7 Here, the fact that Mr. Belk created a political committee with a name that could  
8 easily be confused with a national party committee, and accepted a \$15,000 contribution  
9 as though the NDCC were a national party committee, suggests a fraudulent scheme by  
10 Mr. Belk to disguise the true identity of his committee. Moreover, Mr. Belk personally  
11 endorsed the \$15,000 check, indicating he may have deposited it in a personal account.  
12 At this time, Mr. Belk's actions lead to a reasonable inference that he was attempting to  
13 defraud prospective donors and engage in fraudulent solicitation. Based on the  
14 foregoing, this Office recommends that the Commission find reason to believe that  
15 Marcus Belk and the National Democratic Congressional Committee and Marcus Belk, as  
16 treasurer, knowing and willfully violated 2 U.S.C. § 441h(b).

17 The complaint further alleges that by receiving the \$15,000 contribution after  
18 having terminated the NDCC's status as a political committee registered with the  
19 Commission, Mr. Belk may have violated 2 U.S.C. §§ 433 and 434 by operating a  
20 political committee without registering and reporting. The Act defines a political  
21 committee as any committee, club, association, or other group of persons that receives  
22 contributions or makes expenditures aggregating in excess of \$1,000 during a calendar  
23 year. 2 U.S.C. § 431(4)(A). Contributions and expenditures are broadly defined – these

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1 terms include anything of value that is given or received for the purpose of influencing a  
2 federal election. *See* 2 U.S.C. § 431(8)(A), (9)(A). Pursuant to the Act, an organization  
3 that qualifies as a political committee must register with the Commission by submitting a  
4 statement of organization within ten days of designation and report receipts and  
5 disbursements on a periodic basis. *See* 2 U.S.C. §§ 433, 434.

6 Here, the NDCC and Marcus Belk, as treasurer, violated 2 U.S.C. §§ 433 and 434  
7 by failing to re-register as a political committee once the Committee received a  
8 contribution in excess of \$1,000 and by failing to file disclosure reports with the  
9 Commission thereafter.<sup>9</sup> The NDCC also violated 2 U.S.C. § 441a(a)(1)(c) by accepting  
10 a contribution that was excessive by \$10,000; and violated 2 U.S.C. § 432(b)(3) by  
11 potentially commingling the contributed funds with Mr. Belk's personal funds.<sup>10</sup>

<sup>9</sup> Prior to receiving the \$15,000 contribution on or around February 6, 2004, from the Ford Motor Company Civic Action Fund, Mr. Belk filed a report with the Commission on October 15, 2003, requesting that the NDCC be terminated. By letter dated October 31, 2003, the Commission accepted the filing as a valid termination of the NDCC.

<sup>10</sup> In light of the appearance that the Ford Motor Company Civic Action Fund may have been deceived, this Office does not recommend that the Commission find reason to believe with respect to whether the Fund made an excessive contribution in violation of 2 U.S.C. § 441a(a)(1)(C).

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15 **IV. RECOMMENDATIONS**

16 1. Find reason to believe that Marcus Belk, and the National Democratic  
17 Congressional Committee and Marcus Belk, as treasurer, knowingly and willfully  
18 violated 2 U.S.C. § 441h(b).

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20 2. Find reason to believe the National Democratic Congressional Committee and  
21 Marcus Belk, as treasurer, violated 2 U.S.C. §§ 433 and 434, 441a(a)(1)(c), and  
22 432(b)(3).

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30 4. Approve the attached Factual and Legal Analyses.

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- 1 5. Authorize the use of compulsory process to investigate the matter.  
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5 6. Approve the appropriate letters.  
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8 Lawrence H. Norton  
9 General Counsel

10  
11 12/3/03  
12 Date

13 BY: Rhonda J. Vosdingh  
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